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(1987) 02 AHC CK 0073

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 251 and 259 of 1986

Willard India Ltd. APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 27-02-1987

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 9(1B)

Citation : (1987) 67 STC 255

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : Bharatji Agarwal, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, J.—These are two revisions by the assessee against the Tribunal''s order dated 24th March, 1986.

2. Against the assessment orders, the assessee, a public limited company, filed two appeals before the Assistant Commissioner (Judicial). Though the appeals were presented well within time but no proof of payment of admitted tax was filed with the appeals. The Assistant Commissioner (Judicial) refused to entertain the appeals as no proof of payment of admitted tax was filed with the appeals. Then the assessee carried the dispute in appeal before the Sales Tax Tribunal. It also dismissed the appeals on the ground that the provisions of Section 9(1-B) of the U. P. Sales Tax Act, that no appeal shall be entertained without the proof of payment of admitted tax, are mandatory.

3. Before the Tribunal, the assessee made an application (annexure 3) for condonation of delay for the first time that the admitted tax could not be deposited due to financial exigencies. The grievance of the assessee is that the application (annexure 3) was not at all considered by the Tribunal. The argument of learned Standing Counsel is that when no ground for financial exigencies was

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raised before the Assistant Commissioner (Judicial), the assessee could not raise the same before the Tribunal. The submission of learned counsel for the assessee is that it was for the Tribunal to reject the application for such reason and that the error committed by the Tribunal is that it omitted to consider the application for condonation of delay altogether. When the application for condonation of delay was made to the Tribunal, I agree with the assessee that the Tribunal ought to have considered the same and ought to have recorded a clear finding on the questions whether or not it was open to the assessee to make an application for condonation of delay for the first time before the Tribunal and whether there was sufficient cause to condone the delay.

4. In the result, both the revisions are allowed, the Tribunal''s order dated 24th March, 1986, is set aside and the cases are sent back to the Tribunal with a direction that it will dispose of the application (annexure 3) and then decide the appeals according to law. No order as to costs.

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